

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re S.Q et al., Persons Coming
Under the Juvenile Court Law.

B269196

(Los Angeles County
Super. Ct. No. CK59635)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Frank J. Menetrez, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court
of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Tracey F. Dodds, Deputy County
Counsel, for Plaintiff and Respondent.

Mother Valerie R. (mother) appeals from the juvenile court's November 23, 2015 order terminating jurisdiction and granting sole legal and physical custody of her two daughters to their father, Sonny Q. (father). She contends the juvenile court abused its discretion by awarding sole custody to father. We find no abuse of discretion and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father have two daughters: S. (born July 2004) and Sarah (born June 2005). The family first came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in 2004, when mother tested positive for narcotics while pregnant with S. That allegation was deemed inconclusive, but a 2005 allegation that Sarah was born with amphetamines in her system was substantiated. DCFS filed a petition pursuant to Welfare & Institutions Code section 300¹ in July 2005, alleging that mother placed Sarah at risk by using drugs during her pregnancy, and that both mother's substance abuse and father's lengthy criminal history placed the children at risk of physical and emotional harm. Those allegations were sustained. The family received services, but mother failed to reunify with the girls; a supplemental DCFS petition alleging that mother's history of drug use and failure to comply with juvenile court orders placed the girls in danger was sustained in June 2007. The juvenile court terminated jurisdiction in August

¹ All further statutory references are to the Welfare & Institutions Code unless otherwise indicated.

2007 and awarded father sole legal and physical custody of the children.

The girls reported that they initially visited mother every weekend. However, their visits became significantly less frequent after mother and her husband moved to northern California. Father told DCFS that the girls maintained a close relationship with their maternal grandmother (grandmother), who remained in southern California, and visited their mother with her on at least one occasion. S. stated that the girls would also visit with mother “once in awhile” when she came to the area and stayed with grandmother. Mother agreed that her visits were “limited” due to the distance but told DCFS that she telephoned the girls every day.

The family came to the attention of DCFS again on January 24, 2015, when father was arrested for engaging in a physical altercation with his girlfriend.² Father’s girlfriend told police father threw items, shattered her iPhone screen, struck her with a lamp, and caused her to suffer “a knot on her head, [and] soreness of the back and shoulders.” The girls were present in the house but were asleep in another room when the altercation occurred. Father denied hitting his girlfriend, but ultimately pled no contest to one count of misdemeanor domestic battery (Pen. Code, § 243, subd. (e)(1)). The trial court ordered father to complete a 52-week domestic violence program.

DCFS filed a section 300 petition on January 28, 2015. It alleged that father’s acts toward his girlfriend placed the children at substantial risk of serious physical harm and danger within the meaning of section 300, subdivisions (a) and (b) (a-1 and b-1).

² DCFS received a report of emotional and physical abuse in April 2012 but determined it to be unfounded.

DCFS further alleged that mother's history of unresolved substance abuse and failure to comply with juvenile court orders endangered the children's physical health and safety and placed them at risk of physical harm within the meaning of section 300, subdivision (b) (b-2).

A DCFS social worker interviewed the girls separately. S. told the social worker that father and his girlfriend often argued but only had engaged in one previous physical confrontation, in early 2014. Sarah told the social worker that father and his girlfriend argued frequently, and that father broke a glass bottle on his girlfriend's head the previous week. Both girls denied that father hit them. They also stated that they felt safe living with father and wanted to stay with him. S. said, "I accept any decision that he (Judge) decides, but I really would like to stay with my dad. If he doesn't come out (jail), I'm really happy to live with my mom." Sarah said, "I want to stay with my dad. I feel safe with him." The social worker noted that both girls "appeared age appropriate, well nourished, and emotionally stable."

A DCFS social worker also spoke to father and mother. Father was cooperative. He admitted to arguing with his girlfriend but denied that there were any domestic violence issues in his family. Mother, whom DCFS contacted by phone, told the social worker that she wanted S. and Sarah to be under her care and planned to request custody at the detention hearing. She reported that she was drug-free and offered to drug test at any time. She also "voluntarily disclosed having suffered domestic violence while living with the children's father."

The juvenile court ordered the girls detained from both parents on January 28, 2015. However, both parents were granted monitored visits "as often as can be arranged." The

juvenile court also granted DCFS discretion to liberalize the visitation arrangements. The court ordered DCFS to provide both parents with reunification services.

In a pre-release investigation report filed with the juvenile court on February 6, 2015, DCFS recommended that the children be released to father, subject to unannounced visits by DCFS. The report noted that father “expressed his desire to have the children, S. and Sarah returned to his care and supervision,” and “stated that he has provided care for the children for the past ten years.” The report also noted that both girls said they wanted to live with father.

The juvenile court adopted DCFS’s recommendation and released S. and Sarah to father pending the jurisdiction and disposition hearing. The court ordered monitored visits for mother and gave DCFS discretion to liberalize mother’s visitation.

Mother, her husband, and their two children relocated from northern California to grandmother’s home in late March 2015. Because a registered sex offender also lived with grandmother, “mother was advised that the visits need to be out of the home.”

DCFS filed a jurisdiction/disposition report with the juvenile court on March 27, 2015. That report documented a March 20 interview with S., who told a social worker that she had last visited mother the previous summer. S. also reported that she and mother “don’t really talk a lot,” and that father told her conversations with mother have to be monitored. S. reiterated, “I want to live with my dad though. My mom’s house is like a second house but I’m not ready to go with my mom.” During a separate interview, also on March 20, Sarah reported that she had last visited mother “[l]ike a week after Christmas.”

The report further indicated that Sarah “speaks with her mother on the telephone at times” and “prefers to live with her father and has always been with her father.”

A DCFS social worker interviewed mother on March 25. Mother told the social worker that she had not used drugs since December 2006 and reiterated her willingness to undergo drug testing. She further reported that she was “struggling with communicating with the father specifically around visits.” Mother also stated that she “desires to have her children in her care” but “is satisfied with frequent visits with the children.” Father told the social worker that mother “has not shown much interest in being involved with the children.” He also admitted that he was “reluctant to facilitate visits for the mother.”

In the assessment/evaluation portion of its March 27, 2015 report, DCFS noted that mother “has had minimal involvement in the children’s lives. She has established a new family and is raising her two younger children. The mother has not raised the children S. and Sarah and they have formed a bond with their father and know no other living situation. The children desire to remain residing with the father and prefer to have visits with the mother. Given the children’s recent experience of being detained from their father, stability is needed for the children and any life change, positive or negative, can disrupt their feelings of stability.” DCFS acknowledged mother’s “proactive” attempts “to reestablish cohesion with the children,” and attached several negative drug tests to the report, but recommended that mother receive “frequent monitored visits with discretion to liberalize but not be offered family reunification services.” It emphasized that the girls “are stable in their home and school and have been under the care of their father for a substantial amount of time.”

On April 7, 2015, the juvenile court dismissed the a-1 allegation in the interest of justice but sustained an amended version of the b-1 count against father.³ The b-2 allegation against mother does not appear to have been sustained. The court ordered the girls to remain in father's care, with unmonitored visits for mother and monitored visits for father's girlfriend.⁴ The court continued the matter for a contested disposition hearing.

³ The sustained allegation read: "On 1/24/2015, the children [S] . . . and Sarah['s] father, Sonny [Q.] and the father's female companion, Patricia R[.], engaged in a physical altercation in which the father struck the female companion's face and body while the children were present in the home, inflicting redness to her face and chest and a contusion to her head causing the female companion pain. The father grabbed and pulled the female companion out of a bed. The father broke the female companion's I phone. The female companion threw a lamp against a wall shattering the lamp and inflicting a bleeding laceration on father's toes during the violent altercation with the father. The physical conduct by the father against the female companion endangers the children's physical health and safety and places the children at risk of serious physical harm, damage and danger."

⁴ Father's girlfriend submitted a letter to the court in March 2015, stating that she "plan[ned] on marrying Sonny and being a mother to the children" and "will do whatever I have to do to be in the lives of Sonny and the children." She refused to participate in monitored visits, however, because "she does not want her visits to be monitored and does not want to deal with any of the issues at hand." Father later reported that he was no longer in a relationship with the girlfriend. A DCFS social worker noted that no DCFS staff had ever met or seen the girlfriend during the period of supervision. The social worker further noted that the children had never reported seeing her.

In a last-minute information filed on May 7, 2015, DCFS notified the court “that the mother and the children’s relationship remains unimproved.” It explained: “Since the last hearing, the Department has attempted to arrange a visitation schedule that would be beneficial to all parties involved. However, due to the mother’s current residence whereby a registered sex offender lives in the home, the unmonitored visits must take place out of the home. Initially, the Department arranged for the mother to visit every weekend but the mother consistently cancelled the visits. The father never failed to notify the department or the mother of his frustration and disappointment in the mother cancelling visits. The department was notified by mother that she wanted the exchange of children to be held at the Sheriff’s station as she stated she fears for her safety. The department again arranged with the father to have the exchange at the station to avoid any further conflict. The mother still was not consistently picking up the children. The department asked the mother why she was not frequently visiting the children as she had desired to have the children in her care. She stated that due to the visits needing to be out of the home, she did not have the financial means to provide for the children during the visits and they often wanted to go home earlier than the stated time. CS CSW Black recommended that the mother find local activities to do with the children during her visits such as parks, family member’s homes, mall, free community events and recommended low cost meals to buy for the visits since the mother stated she spends \$100-\$200 each visit. However, it appears that the mother finds excuses to visit with the children consistently [*sic*] which are contrary to her request for custody.”

DCFS filed a disposition report on June 15, 2015. In that

report, DCFS documented a June 2 interview with mother, who stated, “I read your report that you said my visits weren’t getting better with my kids. That’s not true. I have always visited with my kids. We go to the dam, the pier, out to the public. We can’t visit at the house . . .” Mother also stated, “The kids tell me that they want to live with me. I have always been there for them.”

The report also documented June 5, 2015 interviews with S. and Sarah. S. stated, “I want to live with my dad. I don’t want to live with my mom but I would like to just have visits. Like before. I like it here better.” Sarah similarly stated, “I want to see my mom on the weekend only. . . . But I want to stay living with my dad.” Sarah further stated, “I can talk to her on the phone. But sometimes she doesn’t call because she is busy and has stuff to do. But I don’t have to talk to her every day. I would just keep it the same.”

DCFS also interviewed father for the disposition report. He told the social worker that “mother is setting her own rules with regards to visitation,” and that “he feels the mother wants to visit the children at her own convenience.” Father questioned mother’s desire to have the children live with her, since “[s]he can’t even keep them for the entire time of the visit.” Father opined that “[t]he kids don’t have a bond with her. Yes they like to see her and they will always have contact with her and know that she’s their mom but she doesn’t have an attachment and bond like I do.”

DCFS noted that a social worker “expressed to the mother that if her goal was to reunify, consistent and frequent visits would aid in that reunification. However, the mother was adamant in not having weekly visitation and opted to have visits with the children every other Saturday.” DCFS also noted that

mother said “her attorney advised her that she did not need to visit every weekend.” DCFS recommended that father continue to receive family maintenance services and that mother continue to have unmonitored visits without services.

In a last-minute information accompanying the disposition report, DCFS submitted a visitation schedule father signed on June 11, 2015. Mother refused to sign the schedule, which set visits “Every other Saturday from 9am to 6pm, with the next visit occurring on 06/20/2015.” DCFS informed the court that mother “stated that on paper he [father] is agreeable but not when it comes to allowing her to see the children.” The court continued the matter until August 18, 2015.

In a last-minute information filed August 18, 2015, DCFS reported that “father states that the mother’s visits remain inconsistent. He states that she had one visit in July and in early August the maternal grandmother picked up the children for a visit. The father stated that the mother was scheduled to visit the children last weekend but called to cancel stating she was on bed rest.” DCFS attached a progress report showing father was in compliance with his domestic violence classes. It also attached a “Substance Abuse Progress Report” indicating that mother continued to test negative for drugs, “has made excellent progress while in treatment program,” and was “an inspiration for the newcomer.”

The juvenile court held a disposition hearing on August 18, 2015. It found that the “permanent plan of return to home of Father is appropriate” and ordered that “as the permanent plan.” The court retained jurisdiction over the girls but ordered DCFS to prepare a progress report addressing termination of jurisdiction. The court ordered unmonitored visitation for mother, gave DCFS

discretion to allow overnight visits, and set the matter for a progress hearing on November 23, 2015.

DCFS filed a progress report on November 23, 2015. It recommended that the juvenile court terminate jurisdiction “with a Family Law Order granting father . . . sole legal and physical custody of [S] and Sarah . . . with unmonitored visits to mother. . . .” DCFS based this recommendation on father’s full compliance with the court orders, mother’s noncompliance with the counseling portion of the court’s orders (she was in compliance with drug testing), and mother’s limited participation in visits—only seven since she had returned to the area in March 2015. The report also noted that S. and Sarah were up-to-date on their immunizations and dental care, and were of age appropriate development. The report further noted that referrals were made for mental health services, but father declined them “and stated that neither one of the girls are displaying any behavioral problems.” Father’s assertion was contrary to those made by the girls’ teachers, who reported both behavioral problems and unsatisfactory academic performance. Father stated he was aware of the teacher’s concerns about S.’s academic performance.

The juvenile court held a progress hearing on November 23, 2015. At that hearing, mother requested joint legal and physical custody of the children, with father’s home as their primary residence. Her counsel asserted, without pointing to any evidence, that mother “was previously granted joint legal and the father was given sole physical custody,” and argued that mother “has not participated in the legal decisions because the father has not allowed the mother to actively participate.”

Counsel for father and the children both argued against mother’s request. Father’s counsel asserted that father was

awarded sole legal and physical custody in 2007 and had been caring for the girls on his own ever since. Father's counsel further argued that mother "has not been involved in medical, educational decisions," and visited with the girls only "about seven times since this case opened." Counsel for S. and Sarah joined father's arguments. She emphasized that father had been the girls' primary caretaker for the majority of their lives. She acknowledged that mother's visits "go well," and that the girls "enjoy visiting with their mother," but urged the court to grant sole legal and physical custody to father because "mother's role in their lives appears to be that of a visitor and not so much as a parent."

In its report to the court, DCFS recommended that the court grant father sole legal and physical custody. At the hearing, however, counsel for DCFS shifted positions. He argued, "With regard to the sole legal, that does not appear to be legally appropriate. The other part of it, however, does, and they are asking for unmonitored visits but no overnights as long as the mother is residing in the home of the uncle who is a registered sex offender. I would ask that the family order provide for joint legal with sole physical to the father with a visitation per that caveat of the department." DCFS counsel did not cite any authority in support of his assertion that granting sole legal counsel to father was "legally inappropriate." Instead, he argued, "Well, I guess it will be the first time that I have seen it happen. I suppose you could make a case for it, but just that when I have a parent that is visiting on a regular basis unmonitored at that and they have shown up here in court - - to not give them a legal say seems somewhat unusual to me."

The juvenile court terminated jurisdiction after finding

that the conditions that justified the initial assumption of jurisdiction no longer existed and were not likely to exist if supervision were withdrawn. The court granted “father’s request joined by the minors that the custody order provide for sole legal and physical custody for the father and unmonitored visits for the mother but no overnights until she’s no longer living with the [registered sex offender]” It further explained that it was adopting “the department’s recommendation in the report” and was closing the case “with a custody order with those terms.” The court entered the aforementioned custody order, and noted in the accompanying minute order that it was granting “sole legal custody to the father . . . over the objection of the mother.”

Mother timely appealed.

DISCUSSION

I. Standard of Review

“When a juvenile court terminates its jurisdiction over a dependent child, it is empowered to make ‘exit orders’ regarding custody and visitation.” (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1122.) We review those orders for abuse of discretion. (*In re Maya L.* (2014) 232 Cal.App.4th 81, 102.) “[W]hen a court has made a custody determination in a dependency proceeding, “a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citation.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

II. Analysis

Mother argues that the juvenile court abused its discretion because the custody order did not promote the best interests of

the children. She is correct that the best interests of the children are of paramount concern. “When making a custody determination in any dependency case, the court’s focus and primary consideration must always be the best interests of the child.” (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) The juvenile court is not restricted by any preferences or presumptions when assessing the children’s best interests. (*Ibid.*) “Thus for example, a finding that neither parent poses any danger to a child does not mean that both are equally entitled to half custody, since joint physical custody may not be in the child’s best interests for a variety of reasons. [Citation.] By the same token, a finding that the parent from whom custody was removed no longer poses a risk of detriment or that the parent whose custody has been subject to supervision no longer requires supervision is relevant to, but not necessarily determinative of, the best interests of the child.” (*Ibid.*)

Nothing in the record indicates that the juvenile court’s order was not aimed at advancing the children’s best interests.⁵ The court’s failure to specifically address the “Factors Determining Best Interest of Child” set forth in Family Code section 3011 does not persuade us otherwise. Family Code section 3011 lists several factors a family court “shall” consider when determining the best interest of a child, including “[t]he health, safety, and welfare of the child,” “[a]ny history of abuse by one parent or any other person seeking custody . . .,” “[t]he nature

⁵ As the appealing party, mother must affirmatively demonstrate error in the juvenile court’s order. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) The changes in DCFS’s position between its progress report, the progress hearing, and now its response brief do not relieve mother of this burden or otherwise demonstrate error on the part of the juvenile court.

and amount of contact with both parents . . . ,” and the use of controlled substances or abuse of alcohol. However, Family Code section 3011 is by its terms applicable only to “a proceeding described in [Family Code] Section 3021.” (Fam. Code, § 3011.) Dependency proceedings are not among those described in Family Code section 3021. (See Family Code, § 3021.) Accordingly, the juvenile court was not required to invoke Family Code 3011.

The record reflects that father had sole physical and legal custody of the girls for almost a decade. During that time, the girls formed a strong bond with father. They regularly attended school, where they had friends and participated in after-school programs. Although the record indicates that both girls were having some difficulties in school, it also indicates that father was “already aware” of S.’s academic difficulties and that Sarah would “be receiving support from [the] school’s RTI Team.” The girls received regular medical care and were “of age appropriate development.” Both girls repeatedly stated that they were happy living with father and wanted to continue to do so. The sole case mother cites, *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32-33, notes that “the paramount need for continuity and stability in custody arrangements—and the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker—weigh heavily in favor of maintaining ongoing custody arrangements.” The juvenile court did not abuse its discretion to the extent it prioritized those considerations here.

Mother’s conduct during the proceedings further supports the juvenile court’s conclusion that, at this time, the girls would be best served by father retaining full legal and physical custody.

When given an opportunity to take a more active role in the girls' day-to-day lives by visiting with them every week, mother "was adamant in not having weekly visitation and opted to have visits with the children every other Saturday." Mother cancelled 16 of her 23 scheduled visits—more than two-thirds— and cut short at least two others, even after the social worker offered suggestions for lower cost outings and activities. As counsel for S. and Sarah put it, "mother's role in their lives appears to be that of a visitor and not so much as a parent." Although mother's continued sobriety, voluntary completion of a parenting class, and compliance with court-ordered drug testing were commendable, she did not comply with the court's orders to participate in counseling and made at best sporadic efforts to spend time with the girls. In light of all of the circumstances, the court's order awarding sole custody to father was not arbitrary, capricious, or patently absurd.

DISPOSITION

The order of the juvenile court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.